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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,472	03/17/2004	David Bogart Dort	3510-2-14-A	5470
42047	7590	06/28/2006	EXAMINER	
Tortured Path-EMI Solutions LLC 1700 Diagonal Road, 300 Attn: David Bogart Dort Alexandria, VA 22314			TRAN, DALENA	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,472	<b>Applicant(s)</b> DORT, DAVID BOGART	
	<b>Examiner</b> Dalena Tran	<b>Art Unit</b> 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,9-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Notice to Applicant(s)**

1. This office action is responsive to the phone election (4/5/06) to elect without traverse claims 1,3, and 9-14. Thus, claims 1, 3, and 9-14 are pending.
2. In reviewing the IDS (submitted on 10/21/04), the consideration (in the office action sent 11/10/05) of two other prior art non patent literature documents section (page 5 of 5) is withdrawn due to unclear prior art document submitted, and because the examiner overlook the documents, therefore, she was not recognize that there is unclear documents submitted as below:

In page 5 of 5 of IDS submitted on 10/21/04, the two documents:

- A. (ACCELERATION) USING RF (ID) by NERAC, Jay Zocco, Investigator, February 19, 2004. (400 pages).
- B. (ACCELERATION) USING RF (ID) by NERAC, Jay Zocco, Investigator, February 23, 2004. (20 pages).

Those two documents were not in the parent application (10/786177).

3. The prior art submitted on 1/18/06 has been considered.
4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*,

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422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, and 3, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/786177. Although the conflicting claims are not identical, they are not patentably distinct from each other because subject matters of claim 12 in application No. 10/786177 reads on claims 1, and 3 of 10/803472.

Claim 9, is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 10/786177. Although the conflicting claims are not identical, they are not patentably distinct from each other because subject matters of claim 20 in application No. 10/786177 reads on claim 9 of 10/803472.

Claims 10-13, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-17 of copending Application No. 10/786177. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because subject matters of claims 13-17 in application No. 10/786177 read on claims 10-13 of 10/803472.

Claim 14, is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 16, and 19 of copending Application No. 10/786177. Although the conflicting claims are not identical, they are not patentably distinct from each other because subject matters of claims 13, 16, and 19 in application No. 10/786177 reads on claim 14 of 10/803472.

### **Conclusion**

6. Applicant's argument filed on 11/28/05 has been fully considered. Upon updated search, the new ground of rejection as above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalena Tran whose telephone number is 571-272-6968. The examiner can normally be reached on M-F 6:30 AM-4:00 PM), off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 571-272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner  
Dalena Tran



June 23, 2006